

## **REMARKS**

### **Figures**

At page 2, paragraph 2, the figures stand objected to under 37 CFR 1.83(a). The Office Action states that the drawings fail to show every feature of the invention specified in the claims. More specifically, the Office Action states that the current figures fail to clearly illustrate that the two openings are indeed separate and not part of one circular opening. Applicant respectfully disagrees.

Applicant respectfully submits that Figure 2(b) clearly shows openings 216 and 218 separated by middle portion 214. Applicant's specification at least at paragraph [0019] states, in relevant part:

Outer casing 202 may also have an upper portion 204, a middle portion 214 and a lower portion 206, which form openings 216 and 218, allowing sound to enter the system and impinge upon microphone element 212 through microphone gasket 210.

Applicant respectfully submits that it is clear from at least Figure 2(b) that openings 216 and 218 are separate and are not part of one circular opening. Accordingly, Applicant respectfully requests removal of the objection under 37 CFR 1.83(a).

### **Summary**

Claims 1-12 stand in this application. Claims 1 and 6 are currently amended. Support for the current amendments may be found at least at paragraph [0018] of Applicant's Specification. Favorable reconsideration and allowance of the standing claims are respectfully requested

**35 U.S.C. § 103**

At page 3, paragraph 4, claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (hereinafter "AAPA") in view of Killion et al., United States Patent Number 5,878,147 (hereinafter "Killion"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-12. Therefore claims 1-12 define over AAPA and Killion whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

a plurality of openings forming at least one tortuous path leading to at least one inlet; said at least one inlet for allowing sound to reach a microphone element where sound is received

As correctly noted in the Office Action, the above-recited language is not disclosed by AAPA. According to the Office Action, the missing language is disclosed by Killion at Figure 3 and Col. 6, lines 43-50. Applicant respectfully disagrees.

Applicant respectfully submits that Killion fails to disclose the missing language of the claimed subject matter. For example, Killion at the given cite, in relevant part, states:

FIG. 3 shows a subassembly 45 of one embodiment of the capsule 40 of the present invention, showing a top plate 80 with sound tubes 85 and 86 coupling sound inlets 83, 84, to the front chamber 22 and the rear chamber 24 of microphone cartridge 20. Adhesive 27 seals tubes 85 and 86 to microphone cartridge 20.

Killion, at the given cite, arguably discloses sound inlets 83 and 84. By way of contrast, the claimed subject matter discloses a plurality of openings forming at least one tortuous path leading to at least one inlet; said at least one inlet for allowing sound to reach a microphone element where sound is received. Killion, at the given cite, fails to show a plurality of openings forming at least one tortuous path leading to at least one inlet. Figure 3 of Killion clearly shows inlets 83 and 84 without any indication of a plurality of openings forming at least one tortuous path leading to at least one of the inlets. Furthermore, sound tubes 85 and 86 provide a smooth and direct entry point that allows sound to reach microphone cartridge 20. Sound tubes 85 and 86 have no change in direction that would prevent an object from entering far enough to pierce the microphone.

Therefore, sound tubes 85 and 86 also fail to disclose, teach or suggest “a tortuous path leading to at least one inlet.” Therefore, Killion fails to disclose, teach or suggest the missing language. Consequently, AAPA and Killion, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 2-5 is respectfully requested. Claims 2-5 also are non-obvious and patentable over AAPA and Killion, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Claims 6 and 10 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 6 and 10 are non-obvious and are patentable over AAPA and Killion for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 6 and 10. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 7-9, 11 and 12 that depend from claims 6 and 10, and therefore contain additional features that further distinguish these claims from AAPA and Killion.

Furthermore, Applicant submits that even if the combination of the cited references were to teach or suggest every element of the claimed invention, a rejection based on obviousness under 35 U.S.C. § 103(a) is improper unless the references relied upon by the Examiner are analogous prior art. *See* MPEP § 2141.01, for example. "In

order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

Applicant respectfully submits that the Office's conclusion of obviousness is improper because the cited references are in different fields of endeavor. For example, the claimed subject matter is a microphone enclosure for a portable radio. By way of contrast, Killion discloses a directional microphone assembly for an in-the-ear hearing aid. Applicant respectfully submits that one of ordinary skill in the art at the time of Applicant's invention would not have had the motivation to combine the teachings of the cited references because the teachings of Killion are in a different field of endeavor than Applicant's invention and AAPA. For example, Applicant's Specification at paragraph [00014] states:

In the invention, a tortuous path microphone inlet may be used to help prevent an object such as a wire from coming in contact with the microphone components, to prevent the object from damaging these components, while allowing water and foreign matter to be more easily cleared from the inlet by blowing through the system.

Killion, however, arguably discloses a directional microphone assembly for an in the-ear hearing aid. The objective of Killion is to "provide improved speech intelligibility in noise to the wearer of a small in-the-ear hearing aid." Killion at col. 4, lines 34-36.

Killion, arguably, is concerned with providing a small device that delivers improved performance to the wearer. By way of contrast, Applicant's invention aims to protect microphone components within a portable radio from being pierced by foreign objects or

clogged with water and other foreign matter. Applicant respectfully submits that the field of endeavor and problems to be solved by Applicant's invention and Killion are clearly different. For this reason, one of ordinary skill in the art at the time of Applicant's invention would not have found it obvious to combine the teachings of AAPA and Killion.

For at least the reasons given above, claims 1-12 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1-12 is respectfully requested.

### **Conclusion**

For at least the above reasons, Applicant submits that claims 1-12 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to

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be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-12 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

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